IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

1) S.B. CIVIL WRIT PETITION NO.2042/2007.

Dr.Mahesh Kumar Meena and ors.
Vs.
State of Rajasthan and ors.

2) S.B. CIVIL WRIT PETITION NO.2072/2007.

Dr.(Mrs.) Anupama
Vs.
State of Rajasthan and ors.

Date of Order : 15/5/2007.

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri S.N. Kumawat and
Shri Dinesh Kumar Garg for the petitioners.
Shri R.A. Katta for respondent-University.

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BY THE COURT :-
Reportable

The petitioners who are serving the State Government as Medical Officers applied for appearing in Pre-P.G. Medical Examination, 2007 which was held

on 28/1/2007. They are seeking admission against unfilled seats of 50% of the total seats of post graduation in medical study course which are reserved for the central quota. Such seats are filled in as per the Regulations made by the Director General of Health Services, Government of India based on All India Competitive Entrance Examination. Remaining 50% seats are required to be filled in on the basis of merit in Pre-P.G. Medical Examination of the State. Admissions against the seats of State quota are made as per the provisions contained in Ordinances 278-E & 278-G of the University Ordinances which have since been adopted by the Rajasthan University of Health Sciences. Pre-PG Medical Examination are conducted by that University in accordance with the provisions of Post

Graduate Medical Education Regulations 2000, framed by Medical Council of India. Regulations of 2000 inter-alia provides that a candidate seeking admission shall have to necessarily secure, in the case of general category minimum 50% marks and in the case of natural born scheduled caste and scheduled tribe and OBC, 40%. Examination was held at Jaipur on 28/1/2007 and the result of the same was declared on 31/1/2007 in which petitioners could not secure minimum 40% marks and were therefore declared to have failed. According to the petitioners, they could not secure minimum marks owing to the system of negative marking which has been applied by the respondent-University of Rajasthan in that examination. Their objection to negative marking is that due to this system,

sufficient number of scheduled caste and scheduled tribe candidates, especially in the in-service category, are not being able to secure admission thus frustrating the very intention of the State in providing reservation to them. They have therefore filed this writ petition with the prayer that the system of negative marking be declared illegal and unconstitutional and the respondents be directed to provide admission to the petitioners by ignoring such system.

I have heard learned counsel for the parties and perused the material available on record.

Shri S.N. Kumawat and Shri Dinesh Kumar Garg, learned counsel for the petitioners argued that the

Government of India, Ministry of Family Welfare (Department of Health) as far back as 12/9/2001 had issued guidelines to all the Vice Chancellors of the Universities of the nation and all the State Governments, in regard to admission of reserved category candidates in under-graduate and post graduate medical courses in Medical institutions /colleges by requiring them to dispense with the system of negative marking which was being followed by some of the examination bodies in the admissions which was working against the interest of reserved category students. It was argued that the question of abandoning the system of negative marking has been hanging fire with the respondents for some time in the past. Inspite of the fact that more than six years have gone by since the Government of India

impressed upon them to do so, no decision as yet has been taken. It was argued that this system has been playing havoc with the reserved category candidates so much so that in the category of in-service candidates, not even a single candidate from Scheduled Caste or Scheduled Tribe was declared pass this year whereas in open category only two candidates have passed in the category of Scheduled Caste as against 18% of the seats reserved for SC and none against 12% quota of ST candidates. Immediately upon knowing about this, the petitioners submitted a representation to the respondents to give effect to the intention of the Central Government as contained in its Circular dated 12/9/2001 but to no avail. Non implementation of the mandate of the Government of India amounts to

depriving the petitioners of their legitimate right to admission in Pre-P.G. Medical study course. In support of the aforesaid argument, Shri S.N. Kumawat, learned counsel for the petitioners has also placed reliance on Article 16(4-B) of the Constitution of India and argued that the Parliament has deliberately inserted the aforesaid provision by way of amendment which is intended to check alienation of seats ear-marked for S.C. and S.T. to general category candidates which is what has happened in the present case.

Shri R.A. Katta, learned counsel appearing for the respondent-University has opposed the writ petition and argued that scheme of examination is framed at the discretion of the State Government.

System of negative marking is part of the Ordinance 278-E of the University Ordinances which inter-alia provides that while four marks will be awarded for every correct answer, one mark will be deducted for every wrong answer and over writing. This provision is categorically mentioned in para 4(M) of the Instructions Booklet which was supplied to the candidates when they obtained the examination form. The petitioners having submitted the examination form knowing this provision fully well and having appeared in the examination and failed, are now estopped from challenging the scheme of examination. Moreover, such a challenge cannot be sustained because no specific prayer has been made seeking annulment of Ordinance 278-E and for that matter the aforesaid clause 4(M) of the Instructions Booklet.

Shri R.A. Katta while relying upon the judgment of the Hon'ble Supreme Court in **K.Duraisamy and another Vs. State of T.N. and others : (2001) 2 SCC 538** argued that the quota for in-service candidates cannot be considered as a reservation. It is merely a source of admission. He also placed reliance upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in **Dr.Saurabh Choudhary and ors. Vs. U.O.I. and ors. : AIR 2004 SC 2212** in which it has been held by their Lordships that the admission in post graduate course in medical sciences should purely be made on the basis of merit. It has been prayed that the writ petition be dismissed.

I have given my earnest consideration to the

rival submissions of the parties and perused the material on record.

Admitted case of the petitioners is that they applied for the examination and appeared therein on 28/1/2007 result of which was declared on 31/1/2007. When they found that they have been declared fail, much thereafter they filed writ petition on 21/3/2007. The petitioners also admitted that they obtained the examination form alongwith Instruction Booklet prior to submitting it to the respondents. Subsequent to the declaration of the result, the respondents conducted the counselling in so far as for in-service candidates are concerned, on 13/4/2007 and for others on 14/4/2007. The petitioners having appeared in the examination and

failed are estopped from now challenging the scheme of the examination which they accepted without any protest and murmur and thus by their conduct acquiesced in accepting correctness of the same.

But that according to the petitioners cannot be the end of the matter because the Government of India by its circular dated 12/9/2001 issued general guidelines with a view to giving effect to its policy of reservation and impressed upon all concerned to dispense with the system of negative marking adopted by some of the examining bodies but the respondent University is not adhering to these guidelines. Para 4 of the circular containing certain observations with regard to system of negative marking is extracted hereinbelow:-

> "4. With a view to ensure that adequate number of candidates are available for full utilization of the quota of seats reserved for

the reserved category students, the State Governments, Universities /colleges and other Central Medical Institutions are advised to consider the following steps and take appropriate action:

a) To dispense with the system of negative marking followed by some of the Examining bodies in the admission tests for professional courses which is working against the interests of reserved category students;

b) To organize remedial teaching or special coaching for the written test/interview for the SC/ST students in order to encourage and equip them to appear in the entrance tests. There is a UGC Scheme for this purpose which provides funds for honorarium etc., which may be fully utilized by the Universities /colleges."

Stand of the respondents is that even though the P.G. Medical Education Regulations, 2000 provides for minimum 40% as qualifying marks for Scheduled Castes /Scheduled Tribes and Other Backward Class candidates but scheme of examination

is to be framed by the University as per the instructions of the State Government. According to them, system of negative marking is part of Ordinance 278-E of the University Ordinances.

What should be the reservation policy of the State Government and what should be its extent, has to be decided by the State Government. Reliance placed by the learned counsel for the petitioners on Article 16(4-B) of the Constitution (introduced vide 81th Constitutional Amendment of 2000) is wholly misconceived. That article, besides being an enabling provision, would only apply to the matters relating to public employment and not to the process of admission to educational institutions. What should be the system of examination and further,

whether or not there should be system of negative marking are all issues which are the domain of the State Government and the concerned University to be delebrated and decided upon with the aid of experts in the field of academics.

This Court in exercise of its power of judicial review under article 226 of the Constitution therefore cannot by issue of writ of mandamus, call upon the respondents to frame their scheme of examination in a particular manner or abandon part of the examination scheme which has been in vogue for sometime. At the same time, however, petitioners are set at liberty to make a detailed representation to the State Government by giving the datas of the past examinations on the

basis of which they want the State Government to take a view on the recommendations of the Government of India contained in the letter dated 12/9/2001. If any such representation is made, the State Government shall consider the same in consultation with the Medical Council of India and the Rajasthan University of Health Sciences and take a final view in the matter as expeditiously as possible but in no case later than the notification of the Pre-P.G. Examination, 2008.

Both these writ petitions are accordingly dismissed though with the aforementioned observations.

(MOHAMMAD RAFIQ), J.

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